

APPEAL NO. 021654
FILED JULY 29, 2002

Following a contested case hearing held on May 16, 2002, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer resolved the disputed issues by determining that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the fifth and sixth quarters. The appellant (carrier) has appealed on evidentiary sufficiency grounds, contending that the claimant's medical evidence failed to prove that, during the respective qualifying periods, her underemployment was a direct result of her compensable impairment and that she made a good faith effort to find employment commensurate with her ability to work. The claimant's response urges the sufficiency of the evidence to support the challenged factual determinations.

DECISION

Affirmed.

The claimant testified that during the early part of the fifth quarter qualifying period, she worked for her husband's fishing guide service, answering the telephone and relaying messages and information, and that during the remainder of that filing period and during the sixth quarter qualifying period, she worked as a sales clerk at a local imports store that was only open on the weekends. She also testified to the restrictions placed on her activities by her treating doctor resulting from her neck and right shoulder injuries. The carrier contended, essentially, that the claimant limited her work hours during the qualifying periods at issue and that she should have worked more hours or sought employment for more hours in order to be entitled to SIBs for those quarters.

The requirements for entitlement to SIBs are set out in Section 408.142 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). Concerning the requirement that the claimant have made a good faith effort to obtain employment commensurate with her ability to work, Rule 130.102(d)(1) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has returned to work in a position which is relatively equal to the injured employee's ability to work. The hearing officer found that during the fifth and sixth qualifying periods, the claimant had a limited ability to work and that she had a job relatively equal to her ability to work. He also found that her underemployment is a direct result of her compensable impairment. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). We are satisfied that the challenged findings are not so against the great weight and preponderance of the evidence as to be clearly wrong or

manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **THE CONNECTICUT INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICES COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Gary L. Kilgore
Appeals Judge